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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SABIA KHAN Plaintiff, vs. REX WAYNE TILLERMAN, Secretary of State of the United States Defendant.	CASE NO. COMPLAINT FOR DECLARATORY JUDGEMENT AND INJUNCTION (Administrative Procedure Act Case)

Plaintiff alleges:

1. This action is brought pursuant to 28 U.S.C. §1331 because it raises a question under the Constitution of the United States, 5 U.S.C. §551 et seq. and 5 U.S.C. §702.

2. Plaintiff is a citizen of the United States citizen. She was admitted as a lawful permanent resident on October 28, 2001 (Exhibit 1). She was naturalized on August 5, 2009 at San Francisco, California (Exhibit 2).

3. Defendant Rex Wayne Tillerman is the Secretary of State of the United States, the public official who is charged with responsibility, inter alia, of administering and enforcing the laws of the United States relating to the issuance of immigrant visas at consular offices of the United States.

4. On September 10, 2001 plaintiff filed petitions on behalf of her sons, Nasir Khan and Faheem Khan, with the United States Citizenship and Immigration Services (USCIS), an agency

of the United States as defined in 5 U.S.C. §701(b)(1), charged with the duty to administer and enforce the Immigration and Nationality Act (INA).

5. The petition on behalf of Nasir Khan was supported by his birth certificate certified by the Union Council indicating that his date of birth is [redacted] 1988 (Exhibit 3).

6. The petition on behalf of Faheem Khan was supported by his birth certificate certified by the Union Council indicating that his date of birth is [redacted] 1985 (Exhibit 4).

7. On November 14, 2007 USCIS approved plaintiff's petitions on behalf of both Nasir Khan and Faheem Khan, according them classification under INA §203(a)(2)(A) (Exhibit 5).

8. On February 17, 2009 Nasir Khan and Faheem Khan were interviewed at the United States Consulate at Islamabad, Pakistan in conjunction with immigrant visa applications based on the approved petitions of plaintiff on their behaves.

9. On August 5, 2009 the classifications of both Nasir Khan and Faheem Khan were automatically converted to classification under INA §203(a)(1), 8 C.F.R. §1153(a)(1) pursuant to 8 C.F.R. 204.2(h)(3) after plaintiff was naturalized .

10. On November 15, 2011 defendant denied the visa application of Faheen Khan based on a finding that he was inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. §1182(a)(6)(C)(i) because he misrepresented that his date of birth was [redacted] 1985 (Exhibit 6)

11. On November 15, 2011 defendant denied the visa application of Nasir Khan based on a finding that he was inadmissible under INA §212(a)(6)(E)(i) because of his efforts to conceal his age to facilitate the immigration of Faheem Khan (Exhibit 7).

12. On April 23, 2013 USCIS approved an application for a waiver of inadmissibility of Faheem Khan under INA §212(i), 8 U.S.C §1182(i) (Exhibit 8). In his waiver application Faheem Khan maintained that he did not misrepresent his date of birth and his date of birth was [redacted] 1985 as indicated plaintiff's petition on his behalf and in his immigrant visa application (Exhibit 9 - supporting documentation omitted).

13. On August 30, 2013 defendant issued an immigrant visa to Faheem Khan and he was admitted to the United States as a lawful permanent resident on September 8, 2013. The immigrant visa indicated that Faheem Khan's date of birth was [redacted] 1985 as he maintained

in his immigrant visa application. See Exhibit 10.

14. On July 23, 2014 plaintiff filed an action against defendant's predecessor, John F. Kerry, seeking review of the denial of the immigrant visa application of Nasir Khan in United States District Court for the Northern District of California case number 4:14-cv-03322.

15. On October 21, 2014 counsel for defendant in case number 4:14-cv-03322 informed plaintiff via email that defendant concluded that the finding that Nasir Khan was in inadmissible under INA §212(a)(6)(E)(i) could not be sustained and that it would reinterview him to determine his eligibility (Exhibit 11).

16. On November 21, 2014 defendant reinterviewed Nasir Kahn at the United States Consulate at Islamabad, Pakistan.

17. On January 28, 2015 the Embassy again denied the visa application of Nasir Khan. The second denial was based on a finding that he was inadmissible under INA § 212(a)(6)(C)(i) (Exhibit 12).

18. On January 29, 2015 plaintiff moved for dismissal of case number 4:14-cv-03322 because the relief sought in the action was moot and on January 30, 2015 the Court dismissed the action (Exhibit 13).

19. On February 26, 2015 Nasir Khan made a request for reconsideration of the January 28, 2015 denial of his immigrant visa application (Exhibit 14).

20. On March 6, 2015 the Embassy implicitly denied Nasir Khan's request for reconsideration and indicated that he was required to submit a application for waiver of grounds of inadmissibility (Exhibit 15).

21. On May 7, 2015 Nasir Khan applied for a waiver. In the waiver application Nasir Khan indicated that it was his understanding that the misrepresentation upon which the finding that he was inadmissible was of his age, indicated that he had not misrepresented his age and that he was filing the waiver application because defendant had told him he was required to do so in order to be issued a visa. See Exhibit 16 - exhibits omitted.

22. On December 22, 2015 USCIS approved Nasir Khan's waiver application pursuant to INA §212(i) (Exhibit 17).

23. On March 8, 2016 defendant reinterviewed Nasir Khan again.

24. On March 8, 2016 defendant again denied the immigrant visa application of Nasir Khan. The refusal letter issued to Nasir Khan did not indicate a finding that he was inadmissible on any grounds indicated in INA§212, but rather only that he should comply with general requirements for applications for issuance of immigrant visas by providing a passport and birth certificate. See Exhibit 18.

25. On November 28, 2016, in response to Nasir Khan's request for clarification of the reason for the March 8, 2016 denial of the immigrant visa application of Nasir Khan since he had already provided his passport and birth certificate, defendant indicated that Nasir Khan had not provided a birth certificate with his correct date of birth (Exhibit 19).

26. Defendants' actions unlawfully deprive plaintiff of freedom of personal choice in matters of marriage and family life by keeping her separated from Nasir Khan in violation of her right to due process under the Fifth Amendment of the United States Constitution.

27. There is a real and actual controversy between the parties. Plaintiff has no adequate remedy at law. Plaintiff has suffered and continues to suffer irreparable injury as a result of defendant's denial of Nasir Khan's immigrant visa application.

WHEREFOR, plaintiff prays for judgement:

1. Declaring that defendant's denial of Nasir Khan's immigrant visa application was unlawful;

2. Enjoining Defendant to approve Nasir Khan's immigrant visa application;

3. Awarding plaintiff costs and reasonable attorney fees incurred in this action; and

4. Granting such other and further relief as may be appropriate.

Date: 03/27/2017

Respectfully submitted.

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s/Alan M. Kaufman
Attorney for Plaintiff